



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R06-OAR-2018-0176; FRL-9991-12-Region 6

Air Plan Approval; New Mexico; Albuquerque/Bernalillo County; Minor New Source Review (NSR) Preconstruction Permitting Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to convert its June 29, 2017 conditional approval of revisions to the New Mexico State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County minor New Source Review (NSR) program to full approval. The January 18, 2018 SIP submittal satisfies New Mexico's commitment which was the basis of our conditional approval of the minor NSR Preconstruction Permitting Program. Final approval of this SIP submittal will convert our earlier conditional approval to full approval. We are taking this action in accordance with the Clean Air Act (CAA, the Act) requirements.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2018-0176, at <https://www.regulations.gov> or via email to cox.kyndall@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions

(audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Kyndall Cox, 214-665-8567, cox.kyndall@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Kyndall Cox, Air Permits Section, EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, TX 75202, (214) 665-8567, cox.kyndall@epa.gov. To inspect the hard copy materials, please schedule an appointment with Kyndall Cox.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

The CAA at section 110(a)(2)(C) requires states to develop and submit to the EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment/unclassifiable and nonattainment

areas that cover both major and minor new sources and modifications, collectively referred to as the new source review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and minor New Source Review (MNSR). The minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source/major modification thresholds and thus do not qualify as “major” and applies regardless of the designation of the area in which a source is located. The EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR 51.160 – 51.166. The minor NSR regulations are contained in 40 CFR 51.160 – 51.164.

The City of Albuquerque-Bernalillo County submitted revisions to their minor NSR program on July 26, 2013, and subsequently provided supplemental information on April 21, 2016; July 5, 2016; September 19, 2016; and December 20, 2016. In our final rulemaking action, June 29, 2017 (82 FR 29421), we determined that portions of the City of Albuquerque-Bernalillo County SIP submittal were inconsistent with the applicable Federal regulations. Specifically, we found the portions pertaining to accelerated permitting procedures, technical permit revisions, and conflict of interest were not consistent with the required elements of minor NSR programs at 40 CFR 51.160 – 51.164.

In a letter dated December 22, 2016, the City of Albuquerque committed to adopt enforceable revisions to 20.11.41 NMAC to address these concerns and submit these revisions to the EPA as a SIP revision within one year of the EPA’s conditional approval. The January 18, 2018 SIP revision is the City’s fulfillment of this commitment.

II. Evaluation

The January 18, 2018 SIP submittal addresses and corrects the deficiencies of the City of Albuquerque-Bernalillo County minor NSR program identified in our June 29, 2017, (82 FR 29421), final conditional approval as summarized below. The EPA's Technical Support Document for this action is available in the rulemaking docket and includes a detailed analysis of the submitted revisions to the New Mexico SIP for the City of Albuquerque-Bernalillo County minor NSR program.

In our June 29, 2017 final rule, we found that the abbreviated public notice process established by 20.11.41.13 NMAC for technical permit revisions was inconsistent with the requirements of 40 CFR 51.161 since it did not meet the applicable prominent advertisement requirements. The County adopted a single revision to 20.11.41.13 NMAC, Application for Permit, which removed the abbreviated public participation process for technical permit revisions that the EPA had determined was inconsistent with the requirements found in 40 CFR 51.161.

The County revised and clarified the technical permit provisions in 20.11.41.28 NMAC, Administrative and Technical Permit Revisions. In our June 29, 2017 final rule (82 FR 29421), we noted that the Section 28 provisions were inconsistent with federal regulations for public notice since technical permit revisions potentially allowed permittees to conduct changes that may could result in up to a one pound per hour increase of a NAAQS pollutant or NMAAQs pollutant and such changes require the County and permittee to follow the public notice requirements listed in 40 CFR 51.161. The January 18, 2018 revision satisfies the EPA's concern with the technical permit revision authorizing any emission increases: the proposed language in 20.11.41.28(B)(1)(b) NMAC clearly states that technical permit revisions have no potential

increase in emissions and 20.11.41.28(B)(1)(e) NMAC clarifies that any new covered equipment will not result in an emissions increase.

In our June 29, 2017 final rule (82 FR 29421), we conditionally approved the accelerated review provision found in 20.11.41.32 NMAC since it did not comply with the requirement in 40 CFR 51.161 to make the permittee's application, and the County's evaluation of that application, public. The proposed revision to 20.11.41.32 NMAC, Accelerated Review of Application, revised the requirements of public notice to be consistent with federal requirements related to public availability of information and public notice in 40 CFR 51.161 by correcting the citation in 20.11.41.32(B) NMAC.

In our June 29, 2017 final rule, we also conditionally approved the definitions of "conflict of interest" at 20.11.41.7.J NMAC, the references to "technical permit revisions" in the definition for "permit" at 20.11.41.7.EE NMAC, and the definition of "technical permit revision or technical revision" at 20.11.41.7.RR NMAC because these definitions referenced or applied to the underlying provisions for accelerated review and technical permit revisions that were conditionally approved. Because we are proposing to fully approve the revisions to the accelerated review process and technical permit revision, we are also proposing to fully approve the cited definitions as consistent with federal requirements for minor NSR permitting.

In addition to satisfying all elements of our conditional approval, the January 18, 2018 submitted revision to 20.11.41.14 NMAC, Public Notice by Department - Public Participation, removed the requirement to provide public notice in a newspaper and authorized electronic notice on the City of Albuquerque website. The revision to Section 14 is consistent with the EPA's October 18, 2016, 81 FR 71613, publication that authorized electronic notice for the EPA and permitting authorities implementing federal permitting rules. Additionally, the County

proposed to increase the timeframe from ten (10) to thirty (30) days for public hearings in 20.11.41.15 NMAC, Public Information Hearing. We find this to be consistent with federal requirements related to public availability of information and public notice (40 CFR 51.161).

Our analysis of the January 18, 2018 submitted revisions indicates that the SIP revision package was developed in accordance with the CAA and the State provided reasonable notice and public hearing. The revisions to 20.11.41 NMAC update the regulations so that the City of Albuquerque-Bernalillo County minor NSR permit program is consistent with federal requirements. Under section 110(l) of the CAA, the EPA finds that these submitted revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

III. Proposed Action

We are proposing to approve the January 18, 2018 submitted revisions to the New Mexico SIP for the City of Albuquerque-Bernalillo County. We have determined that the submitted revisions were developed in accordance with the CAA and EPA's regulations, policy and guidance for minor NSR permitting. Additionally, we propose to find that the January 18, 2018 submittal satisfies New Mexico's obligation under the March 10, 2017 (82 FR 13270) conditional approval, and to convert the June 29, 2017 (82 FR 29421) rulemaking to full approval. Therefore, under section 110 of the Act, the EPA proposes approval of the following revisions to the New Mexico SIP for the City of Albuquerque-Bernalillo County:

- 20.11.41.13 NMAC, Application for Permit;
- 20.11.41.14 NMAC, Public Notice by Department – Public Participation;
- 20.11.41.15 NMAC, Public Information Hearing (PIH);
- 20.11.41.28 NMAC, Administrative and Technical Permit Revisions; and

- 20.11.41.32 NMAC, Accelerated Review of Application.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference of the revisions to the New Mexico's regulations, as described in the Proposed Action Section above. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 10, 2019.

David Gray,
Acting Regional Administrator, Region 6.

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